

FRIDAY UPDATE—FEBRUARY 18, 2005

*The weekly update of the activities of the Indiana General Assembly
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The end of the first half of the legislative session is quickly approaching. Next week is the last week for committee meetings on bills in the chamber of origin. Below are reports on bills discussed this week.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at http://www.in.gov/serv/lsa_billinfo. You may access past issues of the Friday Update at <http://www.in.gov/judiciary/center/leg/index.html>.

Salaries & Benefits alert: It appears that HB 1777 (judicial compensation), SB 363 (judicial salaries), and HB 1347 (judges' pensions) will be considered for Second Reading early next week. Please read the Indiana Judges Association e-mail for further information.

CIVIL LAW:

The Senate Corrections, Criminal and Civil Matters Committee heard SB 218, presented by Sens. Nugent and Simpson, which would allow the use in a negligence suit of evidence that the plaintiff driver or front seat passenger was not wearing a seat belt. After extensive testimony for and against the bill from business interests, civil defense lawyers, and the Indiana Trial Lawyers Association, the bill was amended to provide that the defendant has the burden to prove his contention plaintiff was not wearing a seat belt and that the evidence could be used only to reduce damages for personal, not property, injury. The committee passed the bill by a 6-5 vote.

The House Judiciary Committee heard HB 1294 concerning sheriff's sale fee, which would permit the sheriff to charge an administrative fee to a person enforcing a mortgage foreclosure judgment. The bill was amended in committee for the administrative fee to be up to \$200. The Indiana Sheriff's Association testified in favor and the bill passed as amended 9-0.

CRIMINAL LAW:

The Senate Corrections, Criminal and Civil Matters Committee heard SB 13. Author Sen. Zakas explained that the bill would require DNA sampling from all persons convicted of felonies, not just those convicted of sex crimes as provided for in current law. The bill also provides that an arrest or conviction is not invalidated by its being the result of a DNA sampling taken in error – as would be the case, Sen. Zakas explained, if a sample was taken from a misdemeanor which resulted in his being charged. The bill was amended, by committee consent, to add language which will allow federal funding for DNA sampling to be taken. Steve Johnson, Executive Director of the Prosecuting

Attorneys Council, reported that HB 1241 had just been passed by House Ways and Means and contained essentially the same features except for the SB 13 “oops clause” on erroneous samplings and a \$1.00 fee, apparently for all offenses, to be used to fund DNA labs. The bill passed unanimously.

The Senate Corrections, Criminal and Civil Matters Committee heard SB 472 on payments for criminal assault examinations. Sen. Lanane explained that the bill will allow compensation to hospitals from the Criminal Justice Institute’s Victim Services Division for sexual assault examinations of adult victims who report assaults within 96 hours. Present law limits reimbursement to reports made within 48 hours. It was explained that forensic examinations now can produce reliable assault evidence as much as 96 hours after the assault, as opposed to the former 48 hour limit on effectiveness. No time limits are imposed for reimbursement for examinations of minors. The committee amended the bill to require that claims submitted to the CJI by hospitals be processed within 180 days. The Hospital Association, a forensic nurse, and the Coalition Against Sexual Assault spoke in favor of the bill, which was passed unanimously.

The Senate Appropriations Committee considered recommitted SB 523 on assistance for reentry court program participants. Sen. Wyss described the purpose and function of reentry courts, talked about the success of the Allen County reentry court, and indicated that there were other counties interested in starting a similar program. This bill would allow all counties to provide food stamp and TANF assistance to previously ineligible drug offenders who were under the supervision of a reentry court. The bill passed 9-0.

The House Courts and Criminal Code Committee considered HB 1091, panhandling. This bill is designed to curtail aggressive behavior involved when an individual accosts someone in a public place and requests an immediate donation of money or something else of value. This behavior, carefully defined in this bill, would fall into the category of panhandling, a Class C misdemeanor. Many members of the City of Indianapolis’ administration testified in favor of this bill, as did numerous downtown Indianapolis restaurant owners. The bill was slightly amended to allow charitable organizations to request permission from a unit of local government to allow solicitation of donations from stopped motor vehicles. The amended bill passed unanimously.

The House Courts and Criminal Code Committee discussed HB 1583, road rage. Rep. T. Brown, author, presented an amendment that changed this bill to cover criminal recklessness and aggressive driving, which was further amended in committee at the suggestion of the prosecuting attorneys. As amended, this bill would establish a misdemeanor offense for aggressive driving, which could become a Class D felony if it results in serious bodily injury. The bill passed unanimously.

The House Courts and Criminal Code Committee also considered HB 1813, community corrections goals and statistics. This bill would require DOC, along with its local community corrections boards to keep electronic statistics of its community corrections programs about the race, gender, ethnicity, and communicable disease carrier

status of its offenders, and report that information electronically to the legislative services agency. This bill also adds the “reintegration of offenders into the community” as a purpose of community corrections programs. This bill passed 11-0.

The House Courts and Criminal Code Committee reviewed HB 1825 concerning human and sexual trafficking and matchmaking. Rep. Austin, author, presented this bill that addresses the problem of women being brought to the United States for marriage or “matchmaking” purposes. Testimony illustrated how this was a problem in Indiana and how many times it results in physical and emotional harm to the woman, particularly in the area of domestic violence. If a person commits human trafficking under the definition of the new chapter, it is a Class B felony, unless the person is a parent, guardian or custodian of a minor and sells or transfers custody of the minor for purposes of prostitution, in which case it is a Class A felony. In a very interesting twist, this bill was also amended to enhance the penalty of intimidation from a Class A misdemeanor to a Class D felony if the threat is to commit a forcible felony and that threat is communicated to an employee of a court or a probation department. This bill as amended passed unanimously.

ELECTIONS & VOTING:

The Senate Elections and Civic Affairs Committee considered SB 482 on voter registration. This is a comprehensive bill to make the changes necessary to allow our new statewide voter registration system to come on-line January 1, 2006. Of specific importance to the judiciary is the new provision that allows the Chief Justice to receive the complete computerized compilation of the statewide voter registration list for purposes of the statewide administration of a jury management system. The voter registration list is a key piece in developing the statewide jury pool. Justice Ted Boehm testified about the importance of this project for the state and the ultimate savings to the tax payers this system could achieve. The bill passed 11-0.

FAMILY & JUVENILE LAW:

The Senate Corrections, Criminal and Civil Matters Committee heard SB 245, which was presented by Sen. Long. He explained that the bill will make any person ineligible for a handgun license if they have been ordered not to have a firearm or if they have been convicted of a crime of domestic violence. The bill was written at the suggestion of law enforcement officers who found that persons prohibited from possessing handguns by court order or domestic violence conviction were still eligible to get handgun licenses. It was noted for the committee that the National Rifle Association did not object to the bill. Steve Johnson of the Prosecuting Attorneys Association and Laura Berry of the Indiana Coalition Against Domestic Violence testified in favor of passage. The committee voted to pass the bill 7-2.

The House Family, Children and Human Affairs Committee heard three bills of interest to judges with juvenile jurisdiction. The first was HB 1038 concerning abuse and neglect, authored by Rep. Neese. This bill came to the committee with an amendment

after being heard last week. This legislation now requires a law enforcement officer to report a child who is a passenger in car to an intake officer for investigation as a CHINS case if the driver is arrested for operating a vehicle while intoxicated. The bill passed as amended 8-0.

The next bill heard by the committee was HB 1743 concerning child caseworker caseload ratios. Rep. Budak, author, said it provides the maximum caseload for caseworkers would be twelve (12) active cases for investigation per month. In addition, it provides for no more than seventeen (17) active families per caseworker for those caseworkers assigned ongoing cases. The bill as introduced would require the state to hire over 800 caseworkers and over 100 new supervisors to meet this standard. Judge Payne, Director, Department of Child Services testified in favor of this bill. Rep. Budak introduced an amendment requiring a B.A. degree for caseworkers and M.A. degree for supervisors, which generated discussion about whether or not to grandfather in existing caseworkers and supervisors. Committee members indicated the governor has included 200 new caseworkers this year and 200 new ones next year in the budget bill. She also introduced an amendment requiring training of caseworkers beginning in 2008. Dean Patchner, I.U. School of Social Work, and Chair, Commission on Abused and Neglected Children stated the caseload standard was the first recommendation of the commission. He noted the caseload sizes in the bill were optimal. Gail Faloran, Professor, I.U. School of Social Work and staff for the Commission said the B.A. requirement is needed and it prevents turnover in caseworker positions. All discussed the starting date for the training. Representatives from Prevent Child Abuse Indiana, IARCCA, Children's Bureau, Marion County OFC, the United Methodist Church, AFSCME, and others spoke in favor of this bill. It was assigned to a subcommittee for further discussion and would be heard again at the committee's meeting next week.

The last bill heard by the committee was HB 1699, which fixes problems, created by last year's legislation, requiring record checks before placement of children with relatives and redaction of records involving child deaths by juvenile courts. The bill now actually permits NCIC record checks to occur through the Indiana State Police on an emergency basis, with a follow-up of fingerprints within 72 hours. There was discussion on whether the caseworker, probation officer or ISP would be required to get the fingerprints in the appropriate CHINS or delinquency case, training required if caseworkers or probation officers got the fingerprints, and the cost of the record checks. Rep. Avery discussed preparation of an amendment to clarify the issue. The bill also specifies a child's death may have been the result of abuse or neglect if the Division of Family and Children determines this or if charges filed by the prosecutor would cause a reasonable person to believe the child's death was the result of abuse or neglect. The name of the parent or guardian of a deceased child would not be required to be redacted according to the bill. Rep. Avery, author introduced two amendments approved by the committee. The first made it clear all records concerning a child's death from the result of abuse and neglect, not just those selected by FSSA's central office were to go to a court for redaction. The other amendment clarified the criminal record check already not required when courts order an out-of-home placement to certain facilities licensed by the state applies to dispositions and permanency hearings, not just initial placements. Darelle

Watson-Duvall of the Child Law Center, ISP, IARCCA, AFSCME and the Hoosier Press Association supported this legislation, which ultimately passed as amended 7-0.

The House Courts and Criminal Code Committee discussed HB 1454, concerning Protection Orders. Rep. Lawson, author, explained this legislation takes care of two small problems. It provides no fees will be charged for protection orders from other states and a person's conviction for a crime, which has similar elements as domestic battery in another jurisdiction, could be used to enhance a conviction for domestic battery in Indiana. Other portions of the bill concerning firearms were amended out of the bill. It passed the committee as amended, 10-0.

The House Judiciary Committee heard HB 1567 concerning curfew presented by Reps. Walorski and Ayres. The bill would allow a child to participate in an activity with the written permission of a parent, guardian, or custodian, which is the same language in the Indianapolis ordinance. The committee raised questions regarding the status of current challenges to the curfew law and enforcement of this provision. The Prosecuting Attorney's Council and the ICLU both testified before the committee. The bill passed 10-0.

JUDICIAL ADMINISTRATION:

The House Judiciary Committee heard HB 1174 concerning jury duty presented by Rep. Mays. The bill requires expansion of the jury pool by including BMV data, removes certain occupational exemptions, codifies deferrals and one day/one trial provisions, and provides some protections for employees called for jury service. The bill was amended in committee to bring the language in line with the Jury Rules, to strike the automatic exemption for 65 and older, and to adjust the definition of small business from 5 employees to 10 employees. Judge Hughes, Hamilton Superior Court, spoke in favor of the bill and was able to answer questions raised by committee members concerning access to BMV data, jury pool formation, and deferral procedures. The bill passed as amended 11-0.

SALARIES & BENEFITS:

The Senate Appropriations Committee discussed SB 363, judicial salaries. Sen. Broden repeated what he presented to the Senate Judiciary Committee about the need for judges to receive regular, periodic salary increases. Judge John Baker of the Indiana Court of Appeals testified on behalf of the bill and reiterated that this proposal sends a message to judges that the legislative and executive branches think that judges are just as important as other state employees. The Prosecuting Attorneys Council, as well as the ISBA, testified in favor of the bill, which was technically amended, and then passed 10-0.

The Senate voted 42-6 to pass SB 88 concerning judges' retirement benefits. The House sponsors are Reps. Ayres and Kuzman.

TRAFFIC & ORDINANCE VIOLATIONS:

The Senate Homeland Security, Utilities, and Public Policy Committee heard SB 7 concerning motor vehicle restraint systems. The bill amends the definition of passenger motor vehicle to exclude only motorcycles, buses, and school buses; would require occupants of a motor vehicle to wear a safety belt except under certain circumstances; and amends the language of IC 9-19-10-3 concerning stopping a vehicle to check compliance with this chapter. The bill passed 10-0.

The Senate Judiciary Committee heard SB 242 concerning driving license reinstatement fees, which was presented by Sen. Long. This bill is a product of the Sentencing Policy Study Commission and would permit courts to suspend, modify, or waive reinstatement fees for those who are indigent, have proof of financial responsibility, and such action by the court would be appropriate considering the nature and circumstances surrounding the suspension. The bill was amended to provide that a court of record with criminal jurisdiction would make these determinations and that the court could do so on its own motion or based on a petition filed before the court. Todd McCormack, Chief Probation Officer in Hendricks County, Steve Johnson, Prosecuting Attorney's Council, and Larry Landis, Public Defenders Council all testified in support of the bill, which passed as amended 11-0.

The Senate Corrections, Criminal and Civil Matters Committee heard SB 498 to allow community service to be imposed for ordinance violations, introduced by author Sen. Server. Sen. Bray and others expressed concern about having community service imposed for violations of traffic ordinances, and in response, an amendment was adopted providing that the community services authorization does not apply to traffic ordinances. The bill will also extend the money damages ceiling for second violations of the same ordinance from \$2,500 to \$7,500. The committee passed the amended bill by a vote of 11 to 1.

The House Roads and Transportation Committee heard HB 1719 concerning driver and motor vehicle matters. The bill was amended in committee to provide, among other changes, that drivers license and state identification cards would expire after 6 years rather than 4 years after December 31, 2005. The bill passed as amended 7-1.